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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 50277-2416	
Pursuant to 37 CFR 1.8(a)(1)(ii) I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office via the electronic filing system in accordance with 37 CFR §§1.6(1)(4) and 1.8(a)(1)(i)(C) on the date indicated below and before 9:00 PM PST. on <u>August 7, 2009</u> Signature <u>/MalgorzataAKulczycka#50496/</u> Typed or printed name <u>Malgorzata A. Kulczycka</u>		Application Number 10/810,152 First Named Inventor Zhen Liu et al. Art Unit 2166	Filed March 26, 2004 Examiner Ahluwalia, Navneet
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a notice of appeal. XX The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided. I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>50496</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____			
		<u>/MalgorzataAKulczycka#50496 /</u> Signature <u>Malgorzata A. Kulczycka</u> Typed or printed name <u>(408) 414-1228</u> Telephone number <u>August 7, 2009</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			

☒ *Total of 1 _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Zhen Liu, et al	Confirmation No.: 8375
Serial No.: 10/810,152	Examiner: Ahluwalia, Navneet
Filing Date: March 26, 2004	Art Unit: 2166
For: TECHNIQUES FOR MANAGING XML DATA ASSOCIATED WITH MULTIPLE EXECUTION UNITS	

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ATTACHMENTS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

The following clear errors occur in the currently maintained rejections of the Final Office Action mailed on June 8, 2009:

I. The Office Actions contradict each other

The Office Actions are full of contradictions with respect to what they allege is shown in *Fernandez et al.* (U.S. Patent 6,785,673). Specifically, the present Final Office Action alleges that *Fernandez* anticipates all limitations received in Claim 1. However, the Examiner explicitly (and correctly) acknowledged in two previous Office Actions the Office that *Fernandez* fails to anticipate Claim 1.

For example, in the Office Action mailed on November 1, 2007, the Office acknowledged that *Fernandez* does not teach the producer unit and the consumer unit, both of which are recited

in independent Claim 1. The same has been admitted in the Office Action mailed on May 29, 2008. The Office's correct understanding that *Fernandez* is missing key limitations of Claim 1, which has been reaffirmed in two previous Office Actions, contradicts the present §102(e) rejection of Claim 1.

This error has resulted in faulty rejections.

II. The Rejection of Claim 1 under 35 USC 102(e) as being anticipated by *Fernandez et al.* is based on a clear factual error.

The rejection of Claim 1 as anticipated by *Fernandez* is based on a clear factual error. (Even though only Claim 1 is discussed below, the arguments below apply to each of the independent Claims 1, 20, 39 and 50.)

1. *Fernandez* does not teach ““detecting that a portion of a query execution plan... will cause a first producer execution unit, that will perform said portion, to generate XML data for use by a second consumer execution unit in performing another portion of said query execution plan,” recited in Claim 1.

The Office Action alleges that FIGS. 6-7 of *Fernandez* show the “detecting that a portion of a query execution plan... will cause a first producer execution unit, that will perform said portion, to generate XML data for use by a second consumer execution unit in performing another portion of said query execution plan,” limitation of Claim 1. This is incorrect. In FIG. 6, *Fernandez* depicts that a query planner partitions an RXL query into sub-trees, a translator decomposes the sub-trees into SQL queries and submits the SQL queries for execution, and an RDBMS executes the SQL queries and returns results that are merged and integrated into an output XML document. (*Fernandez*: Col. 32, ll. 56-57; Col. 38, ll. 15-20) *Fernandez*' FIG. 6 does not show anything to do with the limitation against which it is cited.

In FIG. 7, *Fernandez* depicts relations for the execution plans derived from the RXL query. (*Fernandez*, Col. 40, ll. 24-26) The relations represent a mapping between the deeply nested variables in the RXL query and the variables that were have returned values once the SQL

queries are computed and relation tuples are provided to the XML document's generator. (*Fernandez*: Col. 40, ll. 40-42) However, the relations themselves are not "for use by a second consumer execution unit in performing another portion of said query execution plan," as recited in Claim 1. In fact, the relations have nothing to do with "XML data, generated by the first execution unit, to be used by a second execution unit in performing another portion of the execution query," as claimed.

- a. ***Fernandez*' query execution plan contains does not have two units, where the second unit uses the XML data generated by the first unit, as recited in Claim 1.**

In *Fernandez*, the query execution plan is only in the SQL's environment. *Fernandez* shown nothing like having a "first producer execution unit... and... a second consumer execution unit," wherein the second consumer execution unit "uses XML data, generated by the first producer execution unit, in performing another portion of said query execution plan," as claimed.

- b. **Execution of the *Fernandez*' query execution plan returns relational data tuples, not XML data, as recited in Claim 1.**

Fernandez' RDBMS receives SQL queries and generates data tuples for the SQL queries by querying the database, but does not output or use any "XML data ... in performing another portion of said query execution plan," recited in Claim 1. None of the portions of the *Fernandez*' query execution plan generates XML data or uses XML data generated while another portion of the same query execution plan was performed, as recited in Claim 1.

- c. **In *Fernandez*, the mapping between the variables in the RXL query and the relational data is not used in performing another portion of said query execution plan," recited in Claim 1.**

Fernandez' mapping between the deeply nested variables in the RXL query and the variables in the SQL queries is used, after the SQL queries are computed, to integrate the

relational data into the resulting output XML document. The mapping is not used to perform “another portion of said query execution plan,” recited in Claim 1. In *Fernandez*, there is no XML data “for use by a second consumer execution unit in performing another portion of said query execution plan,” recited in Claim 1.

This error has resulted in faulty rejections.

2. ***Fernandez* does not anticipate “annotating said information with an annotation that causes XML data generated by said first execution unit to be transformed to a canonical form for use by said second execution unit in performing said another portion of said query execution plan,” recited in Claim 1.**

The Office Action alleges that *Fernandez* anticipate the “annotating ...” limitation in Col. 6, ll. 61-67; Col. 7, ll. 1-19; and Col. 28, ll. 1-10. (Office Action, page 3) This is incorrect. In the columns that are alleged to show this limitation, *Fernandez* describes a View Tree, which does not contain any component that can be used “by said second execution unit in performing said another portion of said query execution plan,” recited in Claim 1. Neither *Fernandez*’ View Tree nor any component of the View Tree “causes XML data generated by said first execution unit to be transformed to a... form for use by said second execution unit in performing said another portion of said query execution plan,” as claimed.

This error has resulted in faulty rejections.

3. ***Fernandez*’ annotation does not “cause removal of one or more references to execution unit-specific data that is accessible by the first execution unit but that is not accessible by the second execution unit,” as claimed.**

Fernandez’ annotations pertain to annotating the View Tree’s nodes (*Fernandez*: Col. 36, ll. 20-28), which are never sent to the execution units, and thus, *Fernandez*’ annotating cannot “cause removal of one or more references to execution unit-specific data that is accessible by the first execution unit but that is not accessible by the second execution unit,” as claimed. *Fernandez*’ annotations have no influence on how and in what form the data is exchanged during the execution of the query execution plan, as recited in Claim 1.

This error has resulted in faulty rejections.

Therefore, the Office Action erred in alleging that Claim 1 (and the remaining Claims 20, 39 and 50) is anticipated by *Fernandez*. This error has resulted in faulty rejections.

Reconsideration and withdrawal of the rejection is respectfully requested.

Throughout the pendency of this application, please charge any additional fees, including any required extension of time fees, and credit all overpayments to the deposit account 50-1302.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

Dated: August 7, 2009

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